

§ 58-30-85. Powers and duties of the rehabilitator.

- (a) The rehabilitator has the power:
- (1) To appoint a special deputy to act for him under this Article, and to determine his reasonable compensation. The special deputy has all powers of the rehabilitator granted by this section. The special deputy serves at the pleasure of the rehabilitator.
 - (2) To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he may deem to be necessary to assist in the rehabilitation.
 - (3) To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants, with the approval of the Court.
 - (4) To pay reasonable compensation to persons appointed; and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, rehabilitating, disposing of, or otherwise dealing with the business and property of the insurer.
 - (5) To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to this testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records, or other documents that he considers relevant to the inquiry.
 - (6) To collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose:
 - a. To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;
 - b. To do such other acts that are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as he deems to be best; and
 - c. To pursue any creditor's remedies available to enforce his claims.
 - (7) To conduct public and private sales of the property of the insurer.
 - (8) To use assets of the estate of an insurer under a rehabilitation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under G.S. 58-30-220.
 - (9) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions that are fair and reasonable. He also has the power to execute, acknowledge, and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the rehabilitation.
 - (10) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the rehabilitation.
 - (11) To enter into such contracts that are necessary to carry out the order to rehabilitate, and to affirm or disavow any contracts to which the insurer is a party.
 - (12) To continue to prosecute and to institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this State or

elsewhere, and to abandon the prosecution of claims he deems unprofitable to pursue further.

- (13) To prosecute any action that may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or against any other person.
- (14) To remove any or all records and property of the insurer to the offices of the Commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the rehabilitation.
- (15) To deposit in one or more banks in this State such sums as are required for meeting current administration expenses and dividend distributions.
- (16) To invest all sums not currently needed, unless the Court orders otherwise.
- (17) To file any necessary documents for recording in the office of any register of deeds in this State or elsewhere where property of the insurer is located.
- (18) To assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in rehabilitation has been filed shall not bind the rehabilitator.
- (19) To exercise and enforce all rights, remedies, and powers of any creditor, shareholder, policyholder, or member; including any power to avoid any transfer or lien that may be given by law and that is not included within G.S. 58-30-140 through 58-30-150.
- (20) To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and to act as the receiver or trustee whenever the appointment is offered.
- (21) To enter into agreements with any receiver or insurance regulator of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.
- (22) To exercise all powers now held or subsequently conferred upon receivers by laws of this State not inconsistent with the provisions of this Article.

(b) The enumeration in this section of the powers and authority of the rehabilitator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not specifically enumerated in this section or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of rehabilitation.

(c) The rehabilitator may take such action as he considers necessary or appropriate to reform and revitalize the insurer. He shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except to the extent they may be redelegated by the rehabilitator. He shall have full power to direct, manage, hire, and discharge employees, subject to any contract rights they may have, and to deal with the property and business of the insurer.

(d) If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee or other person, he may pursue all available legal remedies on behalf of the insurer.

(e) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, runoff, or other transformation of the insurer is appropriate, he shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan, and after such notice and hearings as the Court may prescribe, the Court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the opinion of the Court, fair and equitable to all

parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the insurer, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary.

(f) The rehabilitator shall have the power under G.S. 58-30-140 and G.S. 58-30-145 to avoid fraudulent transfers. (1989, c. 452, s. 1; 2009-172, s. 2.)